

MEMORANDUM OF UNDERSTANDING

between

CITY OF SANTA CLARA

and

**ENGINEERS OF THE CITY
OF SANTA CLARA
UNIT 4**



DECEMBER 18, 2005 – DECEMBER 13, 2008

MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
and
ENGINEERS OF THE CITY OF SANTA CLARA
REPRESENTING
PROFESSIONAL ENGINEERS, UNIT # 4

DECEMBER 18, 2005 – DECEMBER 13, 2008

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DECEMBER 18, 2005 – DECEMBER 13, 2008

In accordance with the provisions of Section 18 of the City of Santa Clara Resolution #2979 and with the Meyers-Milias-Brown Act (Government Code Sections 3500 - 3511), this Memorandum of Understanding (MOU) was made and entered into this 7th day of March 2006 by and between the designated representatives of the City of Santa Clara (a public agency as defined in Section 3501 (c) of Chapter 10 of Division 4 of Title I of the Government Code of the State of California), hereinafter referred to as the City, and The Engineers of the City of Santa Clara, hereinafter referred to as the Engineers, the designated representatives of the City of Santa Clara Professional Engineers Unit #4 (a recognized employee organization as defined in Section 3501 (b) of Chapter 10 of Division 4 of Title I of the Government Code of the State of California). This agreement constitutes the results of discussions between the City Management Staff and the Engineers on all matters within the scope of representation. The term of this agreement shall be from December 18, 2005 through December 13, 2008.

WITNESSETH that:

WHEREAS the parties hereto desire to facilitate the peaceful adjustment of differences that may from time to time arise between them, to promote harmony and efficiency to the end that the City, the Engineers and the general public may benefit therefrom, and to establish fair and equitable wages, hours and working conditions for certain hereinafter designated employees of the City.

NOW, THEREFORE, the parties hereto do agree to propose and recommend that the City Council adopt the following, effective as indicated:

1. **TOTAL COMPENSATION**

A. For the purposes of this agreement, total compensation is defined to include the following items:

- 1) Salary
- 2) Fringe Benefits:
 - a. Retirement*
 - (1) CalPERS
 - (2) Social Security/Medicare
 - b. Holiday Pay*
 - c. Vacation Pay*
 - d. CTO Pay*
 - e. Insurance
 - (1) Life
 - (2) Health
 - (3) Dental

*These elements are directly tied to salary and move as a function of salary. No independent movement is allowed in these element areas.

- (4) Long-Term Disability
 - f. Professional Development/Vision/Non-recoverable Medical and Dental Program
 - g. Retiree Medical
- B. It will be the prerogative of the Engineers to allocate the distribution of total compensation monies among the following element areas: 1) Salary, 2) Life Insurance Premiums, 3) Medical Insurance Premiums, subject to the requirement that the amount of the Kaiser single health insurance premium, including the PEMHCA minimum, be included in the mandatory section of the total compensation array, 4) Long-Term Disability Insurance, and 5) Professional Development/Vision/Non-recoverable Medical, except as otherwise noted in this agreement.
- C. It is hereby agreed to and understood by both parties to this agreement that distribution of total compensation monies is to be made based upon: 1) the total compensation array for the benchmark classification of Civil Engineer II, and 2) the maximum premium payable by City and not actual premium to be paid by City, except as noted elsewhere in this MOU.

2. ADJUSTMENT OF SALARIES AND FRINGE BENEFITS

A. YEAR 1 (12/05 – 12/06)

- 1) Effective the pay period commencing December 18, 2005, for all classifications represented by the Engineers, the City shall adopt a monthly total compensation schedule for the benchmark classification of Civil Engineer II that will increase the total compensation of the benchmark classification of Civil Engineer II by 1%. The City will contribute outside of the salary adjustment form / total compensation schedule used by the City to determine the salary and other adjustments that will result from this total compensation increase: (1) fifty percent (50%) of the employer CalPERS retirement rate; and (2) the amount of the City's contribution to retiree health using the same methodology used in the City's total compensation survey (entitled, "Total Compensation Array"). The new salary adjustment form / total compensation schedule shall reflect the applicable City rates for CalPERS, PEMHCA, Social Security and Medicare.
- 2) Effective the beginning of the pay period which includes July 1, 2006, the salary adjustment form / total compensation schedule which was used to develop the December 2005 salary schedule for the Engineers will be adjusted to reflect the change in the City's CalPERS rate from the period of July 1, 2005 to June 30, 2006 to the period of July 1, 2006 through June 30, 2007. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate outside of the salary adjustment form / total compensation schedule. The adjustment of the salary adjustment form / total compensation schedule will modify only the salary and CalPERS contribution elements of the schedule and the total compensation for the schedule will not change.

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B. YEAR 2 (12/06 – 12/07)

- 1) Effective the pay period commencing December 17, 2006, for all classifications represented by the Engineers, the City shall adopt a monthly total compensation schedule for the benchmark classification of Civil Engineer II that reflects the new employer CalPERS retirement rate applicable under the enhanced 2.7% at age 55 formula (see description in Section 16 of this MOU) and increases the total compensation of the benchmark classification of Civil Engineer II by a total of 4%. The City will contribute outside of the salary adjustment form / total compensation schedule used by the City to determine the salary and other adjustments that will result from this total compensation increase: (1) fifty percent (50%) of the employer CalPERS retirement rate; and (2) the amount of the City's contribution to retiree health using the same methodology used in the City's total compensation survey (entitled, "Total Compensation Array"). The new salary adjustment form / total compensation schedule shall reflect the applicable City rates for CalPERS, PEMHCA, Social Security and Medicare.
- 2) Effective the beginning of the pay period which includes July 1, 2007, the salary adjustment form / total compensation schedule which was used to develop the December 2006 salary schedule for the Engineers will be adjusted to reflect the change in the City's CalPERS rate from the period of July 1, 2006 to June 30, 2007 to the period of July 1, 2007 through June 30, 2008. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate outside of the salary adjustment form / total compensation schedule. The adjustment of the salary adjustment form / total compensation schedule will modify only the salary and CalPERS contribution elements of the schedule and the total compensation for the schedule will not change.

C. YEAR 3 (12/07 – 12/08)

- 1) Effective the pay period commencing December 16, 2007, for all classifications represented by the Engineers, the City shall adopt a monthly total compensation schedule for the benchmark classification of Civil Engineer II that will increase the total compensation of the benchmark classification of Civil Engineer II by 2.5%. The City will contribute outside of the salary adjustment form / total compensation schedule used by the City to determine the salary and other adjustments that will result from this total compensation increase: (1) fifty percent (50%) of the employer CalPERS retirement rate; and (2) the amount of the City's contribution to retiree health using the same methodology used in the City's total compensation survey (entitled, "Total Compensation Array"). The new salary adjustment form / total compensation schedule shall reflect the applicable City rates for CalPERS, PEMHCA, Social Security and Medicare.
- 2) Effective the beginning of the pay period which includes July 1, 2008, the salary adjustment form / total compensation schedule which was used to develop the December 2007 salary schedule for the Engineers will be adjusted to reflect the change in the City's CalPERS rate from the period of July 1, 2007 to June 30, 2008 to the period of July 1, 2008 through June 30,

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2009. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate outside of the salary adjustment form / total compensation schedule. The adjustment of the salary adjustment form / total compensation schedule will modify only the salary and CalPERS contribution elements of the schedule and the total compensation for the schedule will not change.

- D. For the duration of this 2005 – 2008 MOU, the provisions specified below in this Section 2(D) are suspended.**

COMPARING AGENCY SALARY ADJUSTMENT

On or before April 1, 2000 and April 1, 2002 if it is determined by the Engineers and representatives of the City of Santa Clara that the total compensation (as defined below) for any classification represented by the Engineers is 2.5% (rounded off to the nearest tenth of a percent) or more below the total compensation survey average for the comparing agencies listed below after the common salary and benefit adjustment afforded each year, the City of Santa Clara shall adjust such classification to the nearest salary step which brings total compensation to or above the total compensation survey average on the City of Santa Clara E salary schedule.

TOTAL COMPENSATION

Top salary step, excluding longevity in that classification, plus any fringe benefits afforded to the employee or paid on the employee's behalf, and which are available to each employee in the classification specified in the survey that are recurring in nature after five years of service in that classification.

For the City of Santa Clara, total compensation shall be defined as those elements listed in Section 1 of this MOU.

The City and Unit #4 shall work together to establish a total compensation array for the classifications of Civil Engineer I and Civil Engineer II between Santa Clara and the below listed agencies. The survey is to be submitted to the City for verification. Comparing agency salary adjustments, if any, shall become effective as of the first pay period in July 2000 and the first pay period in July 2002, respectively.

CIVIL ENGINEER I

<u>AGENCY</u>	<u>POSITION</u>
Mountain View	Assistant Civil Engineer
Palo Alto	Associate Engineer
San Jose	Civil Engineer II
Sunnyvale	Civil Engineer
Santa Clara Valley Water District	Assistant Civil Engineer II

CIVIL ENGINEER II

<u>AGENCY</u>	<u>POSITION</u>
Mountain View	Senior Civil Engineer
Palo Alto	Engineer
San Jose	Associate Engineer
Sunnyvale	Senior Civil Engineer
Santa Clara Valley Water District	Associate Civil Engineer

For the classifications of Electric Utility Engineer, Senior Electric Utility Engineer, Senior Water Engineer and any other classification that might be added to Unit #4 during the term of this MOU, Unit #4 and the City shall continue to perform a comparability study to determine the classifications to be used for the total compensation survey. Upon completion of this study, the agreed upon classifications and comparing agencies shall be added into this MOU and, at that time, the City and Unit #4 shall work together to establish a total compensation array for the classifications between Santa Clara and the agreed to classifications and comparing agencies. Comparing agency salary adjustments for these classifications, if any, shall become effective at a mutually agreed upon date.

- E. It is recognized by both parties to this agreement that it is their mutual responsibility to independently verify, to the extent possible, the accuracy of the information upon which total compensation adjustments are made. Should it be discovered by either party that adjustment(s) to salary and fringe benefits are based on erroneous information or have been erroneously computed, the necessary corrective action will be taken as soon as practical after the discovery and notice of the error has been given. It is the mutual responsibility of both parties to report any suspected error immediately upon discovery to the other party. However, the period for which there will be a right to recover any monies which are either overpaid by the City or underpaid to the employee shall be limited to an adjustment period of up to 90 calendar days from the date the error was first reported to the other party. The corrective action will be taken even in circumstances where the error may bridge successive MOUs, but the recovery will still be limited to amounts owed or owing during the prior 90 calendar days. The 90 calendar day period will begin upon the date of written notification by personal service upon the other party.

Right of recovery by the City of overpayment shall be limited to recovery over the same time period as the overpayment was made, not to exceed 90 calendar days. Said repayment will begin with the next paycheck following final determination of the amount to be repaid. Underpayment to the employee shall be made by the City in a lump sum of the amount owed on the next regular paycheck following final determination of the amount to be paid.

- F. There shall be no employee generated reclassification requests during the term of this MOU.

TABULAR DESCRIPTION OF
ADJUSTMENT OF TOTAL COMPENSATION

- | | |
|--|--|
| 1. Upon adoption of MOU for 2005 and by December 1, 2006 and 2007. | Engineers present their allocation of compensation among the element areas noted in Item 1A. |
| 2. December 18, 2005 for 2006, December 17, 2006 for 2007, and December 16, 2007 for 2008. | City implements Engineers' total compensation array |

For the duration of this 2005 - 2008 MOU, the provisions specified below in Items 3 and 4 of this TABULAR DESCRIPTION OF ADJUSTMENT OF TOTAL COMPENSATION are suspended.

- | | |
|--|---|
| 3. By April 1, 2000 and April 2, 2002 | Engineers, with City's assistance, present their comparison data as defined under Section 2 D, if any, on represented classifications which are 2.5% (rounded to the nearest tenth of a percent) or more below the total compensation survey average after application of the common total compensation adjustment provided for in this MOU for 2000 and 2002 for verification by the City. |
| 4. First pay period after submission of comparison data by the Engineers | City implements salary increases on Salary Schedule "E" for classifications determined to be 2.5% (rounded off to the nearest tenth of a percent) or more under the total compensation survey average as necessary to bring those classifications to equal or above the total compensation survey average. |

DEFINITIONS

1. Top Step Salary - That salary step which is customarily achieved in the comparing agencies monthly salary range for the classification (excluding seniority or longevity steps) after 5 years service.
2. Life, Medical, Dental, LTD and other Insurance - Maximum agency monthly contribution per employee to insurance premiums as defined in Item 1(A)(2)(e) plus maximum agency monthly contribution to other fringe benefit insurance premiums.
3. Retirement - Maximum agency monthly contribution per employee to CalPERS and social security/Medicare plans.
4. Holiday Pay - Number of paid holidays allowed by agency per year times daily salary rate of classification, divided by 12.
5. Vacation Pay - Maximum number of annual paid vacation hours allowed by agency per employee upon completion of five (5) years service times daily salary rate for classification divided by 12.
6. CTO Pay Maximum number of annual paid compensatory time off days allowed by agency per employee times daily salary rate for classification divided by 12.
7. Other - Monthly salary equivalent of or maximum monthly agency contribution to other fringe benefits available to all full-time agency benchmark employees. To be eligible for inclusion in comparison data, such benefits of the comparing jurisdiction must be of a reoccurring nature or become part of their compensation base
8. Total Compensation - The sum of Items 1 through 7 above.

3. OVERTIME PAY

- A. Represented employees assigned to work a 40 hour work week who work overtime are entitled to:

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- 1) Time and one half the employee's hourly rate for worked overtime excluding unpaid meal time for all hours worked beyond their regular daily or weekly work schedule.
 - 2) Double time for all hours worked in excess of 12 consecutive hours of actual work excluding unpaid meal time.
- B. Regular employees assigned to work less than a 40 hour week who work overtime are entitled to:
- 1) Straight time for worked overtime excluding unpaid meal time, which results in less than 40 hours paid time in a work week.
 - 2) Time and one half the employee's hourly rate for worked overtime excluding unpaid meal time for all hours worked beyond the regular daily or weekly work schedule for that classification (usually 8 hour day and 40 hour week).
 - 3) Double time for all hours worked in excess of 12 consecutive hours of actual work excluding unpaid meal time.
- C. Represented employees who are assigned to provide staff support to established City boards and commissions are to be paid at the following rates for hours worked in a 24 hour period from 8:00 A.M. to 7:59 A.M. the following day:
- 1) Time and one half the employee's hourly rate for the first four hours of overtime worked, excluding unpaid meal time.
 - 2) Double time for all hours worked in excess of 4 actual hours of overtime worked, excluding unpaid meal time. Normally this will be after 12 hours of actual work except when an employee is working more than 8 hours as a regular shift.

Compensation for overtime hours worked, either pay or CTO, shall be at the discretion of the employee as long as the employee's CTO balance is below the maximum accrual set by the department and outside circumstances do not dictate the City pay the employee. If an employee's department has not set a CTO maximum accrual, the maximum accrual shall be the legal maximum of 240 hours. It is the City's intention to enforce the CTO maximum accrual limit that applies to each employee.

- D. Represented employees shall not be called back from their lunch break to perform duties they would normally handle during their on-duty time. Should they be called back during their lunch break, they will be given an alternative time for their lunch break or be compensated for the call back time at the appropriate overtime rate.

This section is not intended to dilute the Department Head's right to modify an employee's regular work schedule with appropriate notice to avoid the overtime assignment. Such notice of change to an employee's regular work schedule shall be made no less than two weeks in advance.

4. HOLIDAYS AND AWARDED CTO

A. Holidays

The City will observe the following thirteen (13) dates (or days) as City Holidays and City offices will be closed in observance of those holidays. Represented employees will be entitled to eight (8) hours of paid time off in observation for each of the holidays listed.

New Year's Day (January 1), Martin Luther King Day (3rd Monday in January), President's Day (3rd Monday in February), Spring Holiday (observed on Good Friday), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (1st Monday in September), Admission Day (September 9), Columbus Day (2nd Monday in October), Veteran's Day (November 11), Thanksgiving Day (4th Thursday in November), Friday after Thanksgiving, and Christmas Day (December 25). Holidays which fall on a specific date and which fall on Saturday are observed the preceding Friday. Holidays which fall on a specific date and which fall on Sunday are observed the following Monday.

B. Awarded Compensatory Time Off (CTO)

Each January 1, the City will credit each represented employee with 16 hours of priority compensatory time off (CTO) (or the proportionate share if the employee is working a reduced work schedule). The 16 hour CTO accrual will be included in the total compensation calculation for the benchmark classification. This CTO shall be available for use by the employee on a higher priority basis than the terms and conditions required by the department for use of regularly accrued CTO. Unused CTO may be traded for cash payout at any time after accrual.

Employees hired after January 1, 2004 shall be credited with a pro-rata share of the awarded CTO based upon the proportion of the calendar year remaining after their hire date.

5. VACATION USE AND ACCRUAL

The City of Santa Clara Unit 4 employees will be entitled to use vacation as it is earned under the following conditions:

- A. Vacation hours may not be taken during the first six (6) months of regular employment.
- B. Vacation is based on completed years of service. Vacation hours will be earned each bi-weekly pay period $\{(1/26) \text{ of the year}\}$ provided that the employee is in a paid status for at least $2/3$ of the hours (53.4 hours) of the eighty (80) regular working hours of that pay period.
- C. At the end of employment with the City of Santa Clara, all of the employee's accrued vacation time (up to the maximum accrual allowed) will be paid off in cash, regardless of term of the employment.

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- D. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

<u>COMPLETED YEARS OF SERVICE</u>	<u>ANNUAL ACCRUAL</u>	<u>MAXIMUM ACCRUAL</u>
1 through 4	80 hours	400 hours
5 through 9	120 hours	400 hours
10+ years	168 hours	400 hours

- E. The existing practice that requires an employee to cease accrual of vacation in any pay period during which his/her vacation balance exceeds the maximum accrual as shown in paragraph D of this Section is as follows:
- 1) Employees are limited to the maximum vacation accrual allowed as defined, based on years of service. Employees may temporarily exceed the maximum allowed vacation accrual, subject to the vacation balance as of the end of the pay period that includes December 31 of each year being reduced to the maximum accrual allowed.
 - 2) Vacation accrual that is allowed to temporarily exceed the maximum accrual will be removed from the vacation balance as of the end of the pay period which includes December 31 of each year may be donated to Unit 4's Emergency Paid Leave Fund pursuant to the direction of the employee.
 - 3) The current accrued vacation hour balance, the year-to-date accrual, and the current pay period vacation hour usage are all shown on the employee's paycheck stub. It is the responsibility of the employee to track for compliance.
- F. Vacation may be used in one-tenth (1/10th) hour increments.
- G. Employees who begin work prior to July 1st or continue to be employed after the first calendar year of employment are required to use, in time off, at least one half (1/2) of their previous year's earned vacation hours during the present calendar year. An exception to this requirement is made for employees beginning City service after July 1st of any year for the first calendar year following their appointment.
- H. Employees are required to use at least one half (1/2) of the vacation accrued during the previous calendar year during the current year. An exception to this requirement is made for employees beginning City service after July 1st of any year for the first calendar year following appointment.
- I. In the event that the City determines to close the offices during regular working hours, represented employees will have the option to use available vacation in lieu of unpaid time off.
- J. Subject to having a sufficient balance of accrued vacation available an employee who is at or exceeds the maximum vacation accrual limit may, on a once per year basis, request to be paid at his/her current hourly pay rate for a maximum of

40 hours of accrued vacation if he/she has taken at least one-half (1/2) of the vacation earned in the previous calendar year during the current calendar year .

- K. In lieu of receiving a vacation-leave cash payout at retirement, the Engineers may vote to roll accrued vacation leave hours into the employee's VEBA account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

6. HEALTH INSURANCE PREMIUMS

A. Mandatory Health Allocation

Kaiser single employee health insurance will be included in the Total Compensation array as a Mandatory Allocation. The amount allocated for Kaiser single employee health insurance will be the premium minus the statutorily required Public Employees Medical and Hospital Care Act (PEMHCA) contribution. The PEMHCA contribution will remain in the Total Compensation array as a separate Mandatory Allocation. The City will change the dollar amount designated within the array for Kaiser single employee health insurance when the premium amount changes and/or when the statutorily required PEMHCA contribution changes.

B. Discretionary Health Allocation

The Engineers may (on a once-a-year basis, commencing with the beginning of the calendar year) designate within the discretionary portion of the total compensation array a fixed monthly sum for all represented employees for employee plus one or full family coverage. In order to offset the increase in premium that may be expected during the course of the calendar year, the Engineers monthly discretionary allocation for health insurance premiums may exceed the cost of the highest cost family medical insurance premium coverage available to employees who reside within Santa Clara County by an amount not to exceed ten percent (10%) above said premium at the time of the annual allocation of total compensation monies. If the health insurance premium for an individual employee exceeds the amount allocated, the balance is paid by way of a salary deduction from the pay of the individual employee.

C. Health Allocation Refund

All individual employees having health insurance payments made on his/her behalf that are less than the monthly amount allocated by the Engineers will have the difference refunded on a once-a-month basis. Such payments shall be made on the first paycheck issued in each month. This refund program requires the following qualifications: 1) it must be a health insurance program; and 2) it must be a health insurance vendor with a current contract with the City through the CalPERS Health Insurance Program. City health insurance coverage will be at the option of the individual employee. It is the intent of this section that employees opting not to have City health coverage will be refunded the full amount allocated on their behalf for health insurance.

- D. The City shall comply with the provisions of the Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA).

7. OTHER INSURANCE PREMIUMS

For the duration of this agreement it will be the prerogative of the Engineers to avail themselves of any approved program, which is implemented by any other bargaining group, which provides a more flexible method for payment of insurance premiums. The Engineers also agree to continue in the current City Dental Program until such time as they have complied with the notice requirements of that program to withdraw.

8. PROFESSIONAL DEVELOPMENT/VISION/NON-RECOVERABLE MEDICAL AND DENTAL CARE PROGRAM

The Engineers may allocate a sum not to exceed \$200 per month to be charged against Total Compensation for the purpose of establishing a fund to reimburse the employee for monies expended for PROFESSIONAL DEVELOPMENT/VISION CARE/NON-RECOVERABLE MEDICAL AND DENTAL CARE. This fund will be disbursed annually on or about November 15 in accordance with the instructions of the employee as to how much money is to be accounted for as reimbursement for the covered elements of the program, on the basis of the allocated amount per month for the period from November 1st of the previous calendar year to October 31st of the current year, provided funds were allocated for each of those months. Any remaining balance of the employee's allocation will be added to the next regular pay check as miscellaneous earnings. Employees who leave City Service for any reason will be entitled to claim the allocated amount per month for each full month of service that has elapsed since the last distribution. Employees joining City Service will be entitled, in November, to a payment of the allocated amount per month for each full month of service following the most recent distribution of the funds.

9. VEBA

The City established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a defined contribution post retirement medical benefit for employees. The City will no longer make contributions to employee VEBA accounts effective December 21, 2003. Employee VEBA accounts will remain open for other potential contributions. Specific information regarding the Plan is referenced in the Plan Document.

A VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified unreimbursed medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for unreimbursed health insurance premiums, qualified long-term care insurance premiums, and other qualified unreimbursed medical expenses and will not be taxed under current state and federal law. Withdrawals cannot be made for non-medical purposes.

10. RETIREE MEDICAL REIMBURSEMENT BENEFIT

- A. The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the first full month of retirement from City service and ending with

the last full month before the retiree's sixty-fifth (65th) birthday. Starting with the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental health insurance premium. For premiums paid in calendar year 2005 that will be reimbursed in 2006, the City will reimburse an amount up to \$256 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$154 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium. The amount of the City reimbursement will be adjusted thereafter once each year by the percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.

- B. Beginning in 2004, the City will pre-fund this benefit with an amount to be determined by an actuary.
- C. Each retiree will be required to submit proof of health insurance coverage to the City each year. The City will pay the reimbursement in a lump sum payment once per year.

11. UNPAID TIME OFF

The City Manager shall be authorized to grant up to a one-year leave of absence without pay for medical reason or personal emergency such as family medical, pregnancy or other need to care for the immediate family. Employees granted such leave of absence will be returned to the same department, classification and salary upon resumption of their City employment.

The City Manager shall be authorized to grant up to a one-year leave of absence without pay for personal reasons or professional development. Employees granted such leave of absence will be returned to the same classification and salary upon resumption of their City employment.

12. INDUSTRIAL INJURY/CONTINUATION OF INSURANCE BENEFITS WHILE ON WORKERS' COMPENSATION

Workers authorized by the City's Workers' Compensation Administrator to undergo therapy or treatment due to an industrial injury, who are required to leave work, shall receive leave with pay, including reasonable travel time, providing the treatment falls within the normal working hours, is pre-scheduled and can not be scheduled during non-work hours.

The City will continue payment toward health, dental and life insurance coverage for the employee and dependents up to the maximum amount allocated under total compensation for an employee who is disabled from work because of a work related injury if the employee is no longer in a paid status sufficient to continue the coverage afforded under the terms of the program, subject to the following conditions:

- A. The employee may not increase the existing coverage after the date of injury except to add children born within nine months of the injury.

- B. Continuation toward payment of employee health/dental/life insurance coverage up to the maximum allocated under Total Compensation is limited to one (1) year from the date of injury, unless the employee continues to be on temporary disability status for a Workers Compensation injury. Continuation toward payment of dependent health/dental/life insurance coverage up to the maximum allocated under Total Compensation is limited to one (1) year from the date of injury.
- C. The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, CTO or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City.

13. LAY-OFF POLICY

A. POLICY

The need for reduction in force shall be determined by the City Manager as a result of the resource allocation plan adopted by City Council. The determination to reduce the work force shall contain reasons for reduction and a listing of programs, which are affected, and the specific City classifications and numbers within each classification, which shall be reduced.

In the event the City demonstrates it is necessary to reduce the work force of represented employees, the City agrees to meet-and-consult with the Bargaining Group at least thirty (30) days prior to any layoff notifications to receive recommendations as to how best to accomplish this process with the least impact on represented employees, and to explore alternatives such as reductions in work hours, freezing of merit pay increases or similar programs which will result in reducing the City's labor costs.

If the City implements a reduction in work force, the City will administer the lay-off policy consistent with the following concepts:

- 1) ORDER: The order of lay-off shall be as follows:
 - a. Temporary (as-needed) employees
 - b. Probationary employees
 - c. Permanent employees with formal disciplinary action resulting in written notice of suspensions, reductions in pay, or demotion within the most recent three years from date of layoff notice.
 - d. Permanent employees in inverse order of seniority within the classification series being reduced.
- 2) SENIORITY: Seniority shall be determined by the length of current continuous, permanent service with the City regardless of classification in which employed. Continuous service shall be defined as that which has not been interrupted by separation of service from the City. Seniority shall be retained, but shall not accrue, during any period of authorized leave without pay (more than 5 days), except for military leave.

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- 3) NOTICE: When the City determines that it must implement a reduction in work force, notice to the employee shall be in writing at least thirty (30) days prior to the effective date of the lay-off. The Bargaining Group shall also receive concurrent notification of lay-off. The notice of lay-off shall contain the following:
 - a. Reason for lay-off
 - b. Effective date of lay-off
 - c. Opportunity to discuss with a representative of management.
 - d. Conditions governing re-employment
 - e. Information regarding Unemployment insurance
- 4) REASSIGNMENT (BUMPING): Employees identified for lay-off shall have reassignment rights (bumping) to the same classification in a different department or division, or to a previously held classification in which the employee attained permanent status based upon seniority as defined in Section B above. Employees must exercise these rights by notifying Personnel, in writing, within seven (7) calendar days ending on a regular workday after receiving written notification of the lay-off.

In the event of lay-off, any employee so affected may elect to:

- 1) Accept a position in a lateral or lower class in which he/she has permanent status, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 2) Accept a position in a higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's transfer from the higher class was voluntary and occurred during his/her current period of employment and provided he/she is otherwise qualified and is more senior than the least senior employee in such higher class.
- 3) Accept a vacant position in a lateral or lower class for which he/she is otherwise qualified.
- 4) Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on lay-off in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on lay-off, such employee will only be recalled to the classification from which the employee elected to be placed on lay-off. The decision to not accept assignment to a lower classification may adversely affect the employee's ability to collect unemployment insurance.

B. RE-EMPLOYMENT/REINSTATEMENT LISTS

The names of regular or probationary employees laid-off according to this policy will be placed on a Re-employment List for each classification for which the employee is eligible in the inverse order of the lay-off. Individuals names will be retained on a Re-employment List for classified positions for five (5) years from the effective date of

lay-off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

In the event an employee accepts reinstatement to a lower class than the one from which laid off, such person's name shall remain on the Re-employment List for reinstatement to the class from which laid off, lateral classes or other higher classes upon which his/her name appears provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent lay-off. Individuals names will be retained on a Re-employment List for classified positions for five (5) years from the effective date of lay-off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

14. REDUCED WORK WEEK/REDUCED PAY AND VOLUNTARY TIME OFF (VTO)

Employee participation in this plan is contingent upon the City's understanding and agreement that employee participation cannot be interpreted as anything other than temporary. This is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not be harmed by such a plan becoming mandatory.

A. REDUCED WORK WEEK/REDUCED PAY (Long Term Program)

Employees may request a reduced work week schedule (32 hours per week instead of 40 hours per week, for example) at the same hourly rate of pay, subject to the following conditions:

- 1) With the approval of the Department Head and the City Manager, a binding work schedule as requested by the employee will be developed that may be modified only with the approval of both the City and the employee.
- 2) More than a 20% reduction of the work week in a pay period will result in proportionate reduction of accrual of sick leave and vacation.
- 3) No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.
- 4) Impact on retirement and other benefits will be determined by the application of actual work hours and rates of pay required under each of those programs.
- 5) Overtime hours will be paid at the straight time rate for hours worked which are less than the employee's regular daily work schedule or 40 hours per week. Overtime hours worked in excess of the employee's regular daily work schedule or more than 40 hours per week will be at the appropriate overtime rate.
- 6) Cancellation of the employee's participation in the program will be by mutual agreement of the employee and the Department Head, with the approval of the City Manager.

B. VOLUNTARY TIME OFF (Short Term Program)

Employees may request voluntary unpaid time off under the following conditions:

- 1) Approval of a work schedule that does not adversely impact the operations of the department or other employees in the work unit with the approval of the Department Head and the City Manager.
- 2) No impact on either sick leave or vacation accrual if sufficient hours are worked in a pay period to entitle the employee to his/her regular accrual rate for either benefit.
- 3) No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.
- 4) Voluntary time off may be taken without the employee first using all of his/her accrued Compensatory Time Off (CTO).
- 5) Employee may cancel his/her participation in the program with a notice time agreed upon at the time of the granting of the request which will be sufficient to allow the department head to accommodate the request.
- 6) Cancellation of the employee's participation in the program will be at the discretion of the Department Head with the approval of the City Manager.

15. EMERGENCY PAID LEAVE POOL

A. ADMINISTRATION

Administration of this program shall be provided by a three (3) member Emergency Paid Leave Board (Board) consisting of two (2) members of the Engineers' Board and the City's Director of Human Resources (or designee). Determination of eligibility to use the vacation established in this Emergency Paid Leave pool will be by majority vote of this board. An adverse decision of this board may be appealed to the Engineers Board of Directors and their determination shall be final.

B. METHOD OF DONATION

- 1) Contribution of vacation or CTO will be computed at the member's base hourly rate of pay (excluding premium or specialty pay).
- 2) Contribution may be made from earned vacation, CTO or cash only. Conversion of Sick Leave to Vacation for purposes of donation to this pool will be immediately credited to the pool.
- 3) In a case where it has become known that an employee has been seriously injured or has a life-threatening illness and is in need of assistance from the Emergency Paid Leave Pool, contributions from accrued Sick Leave,

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computed at the contributing employee's base hourly rate of pay (excluding premium or specialty pay) may be made for the benefit of that specific employee who has the need.

- 4) Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the pool when the employee's vacation accrual has reached the maximum allowed.
- 5) Funds contributed to the Emergency Paid Leave Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated.
- 6) Employees and/or Unit 4 may contribute earned vacation, CTO or cash to the Emergency Paid Leave Pools of other City bargaining groups.

C. USE OF POOL

- 1) Employee must have a verified emergency need for time off to request Emergency Paid Leave from the pool. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. Non-medical emergencies shall be verified by certification acceptable to the Board and shall include the anticipated duration of the emergency.
- 2) Employee must have exhausted appropriate paid leave (sick leave including eligible conversion to vacation, vacation or CTO) prior to becoming eligible to request vacation benefits from the pool.
- 3) The maximum time available from the pool (subject to the assets of the pool) will be 160 hours (two [2] pay periods) for Emergency Paid Leave benefits due to the illness or injury of the employee or the maximum allowable accrual of vacation for emergency needs of the family of the employee.
- 4) Emergency Paid Leave will be deducted from the pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay).
- 5) Emergency Paid Leave hours will be made available for use in the pay period following approval by the Engineers.
- 6) Use of Emergency Paid Leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.
- 7) Emergency Paid Leave, which has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the pool. Vacation, sick leave and other benefits which have accrued to the employee will remain in the employee's account.

16. CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

The City and represented employees have agreed to enhance their CalPERS retirement benefit from the current 2% at age 55 formula to the 2.7% at age 55 formula effective December 17, 2006, Year 2 of this MOU. The City and the Engineers shall cooperate to take all necessary actions required by law to effectuate this CalPERS retirement benefit enhancement effective on December 17, 2006.

During Year 1 of this MOU, the City will continue to contribute fifty percent (50%) of the employer CalPERS retirement rate under the 2.0% at age 55 formula outside of the salary adjustment form / total compensation schedule, in the same manner as the City did under the 2003-05 MOU. Beginning in Year 2 of this MOU, under the enhanced 2.7% at age 55 formula, the City will continue to contribute fifty percent (50%) of the employer CalPERS retirement rate applicable under the enhanced 2.7% at age 55 formula outside of the salary adjustment form / total compensation schedule.

The employee's contribution will continue to be treated as tax deferred.

17. SICK LEAVE/FAMILY SICK LEAVE/PERSONAL LEAVE

A. SICK LEAVE

- 1) Employees shall accrue ninety-six (96) hours of sick leave per year of regular City employment. Sick leave shall accrue in equal amounts each pay period. Employees shall not accrue sick leave while they are on unpaid status.
- 2) Use of sick leave will be under the same terms and conditions as are now in place. Vacation and CTO may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30 at the time this MOU was adopted.

B. FAMILY SICK LEAVE

- 1) Not more than forty eight (48) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

C. PERSONAL LEAVE

- 1) Each calendar year, an employee is entitled to use thirty-two (32) hours of accrued sick leave as Personal Leave, provided he/she has sufficient sick leave balance available.

- 2) Personal leave is intended to provide the employee with paid time off to attend to legitimate personal business that may arise from time to time during the year. Personal leave may be used to supplement sick leave as required.
- 3) The employee has an obligation to provide as much notice as possible so as to allow for proper scheduling by the department.
- 4) Providing that the minimal requirements of proper notification have been met, the use of Personal Leave should not be denied.

The adoption of this program does not modify the existing ability of the employee to exchange up to 96 hours of accrued sick leave for up to 48 hours of vacation, based upon two (2) hours of sick leave for one (1) hour of vacation as provided and defined in the Personnel and Salary Resolution.

18. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section 22(A). Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent (including step, adoptive and in-law), child (including step, adoptive and in-law), sibling (including step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent (including step, adoptive and in-law), grandchild (including step, adoptive and in-law), aunt (including step, adoptive and in-law) or uncle (including step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of their own or a step, adoptive, or in-law great-grandparent, great-grandchild, niece, nephew, or first cousin.
- B. The bereavement leave benefit is based on each death occurrence and is not charged through the total compensation model.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.
- D. At the request of the City, the employee will provide verification.

19. LIMITED/ALTERNATIVE DUTY

A. JOB RELATED ILLNESS OR INJURY

Effective with this agreement, employees who have a job related illness or injury which requires him/her to be off work under Workers' Compensation will be assigned to limited or alternative duty under the following condition:

Supervisors shall be advised of the medical condition of any industrial injury as soon as practical. Upon receipt of a Doctor's report which provides work limitations, the City may identify a regular or modified assignment for which the employee has the required experience and training to be eligible for assignment to. Such assignment

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may be based upon a 40 hour per week or less basis. If the assignment is for less hours than the employee's regular work assignment, or is for a different work schedule, the employee may provide justification for refusal of the assignment based upon a hardship.

Employees who have a job related illness or injury which requires him/her to be off work under Workers' Compensation or who do not qualify for limited or alternative duty will be reassigned to a Monday through Friday work schedule to keep required medical or other workers' compensation commitments.

B. NON JOB RELATED ILLNESS, INJURY OR CONDITION

Effective with this agreement employees who have a non job related illness, injury or condition which requires him/her to be off work may request to be assigned to limited or alternative duty. Nothing in these provisions is intended to imply that an employee has a right to a limited/alternative duty assignment, unless expressly provided by law. Such request will be accommodated unless no appropriate limited or alternative duty assignment is available under the following conditions:

- 1) Identification by the City of a regular or modified assignment for which the employee has the essential experience and training to be eligible for assignment to. Such assignment may be based upon a 40 hour per week or less basis. If the assignment is for less hours than the employee's regular work assignment, or is for a different work schedule, the employee may provide justification for refusal of the assignment based upon a hardship.
- 2) Upon a written release from his/her doctor, subject to review by the City doctor, which allows the employee to perform all of the duties of the contemplated assignment.
- 3) Employees may account for his/her regular work schedule through a combination of limited or alternative duty hours and sick leave or other paid leave sufficient to maintain eligibility for regular accrual of benefits.

Under both of these limited or alternative duty assignments employees will be required to work their regularly scheduled number of hours (normally forty (40) hours) per week, unless such assignment is modified by mutual agreement between the City and the employee. It is recognized that performance of limited or alternative duty assignments will not be permitted to interfere with any medically related treatment designed to assist the employee to return to full, unrestricted duty in the earliest possible time frame.

All such assignments, and their duration, are temporary assignments and are subject to periodic sixty (60) day review of the employee's continued need for limited or alternative duty, the employee's continued ability to perform the limited or alternative duty and the department's ability to continue the employee in the assignment. All temporary assignments shall be at the employee's regular rate of pay.

In the event the Americans with Disabilities Act (ADA) requires modification of the provisions of this section, it is agreed that the law will prevail.

20. OUT-OF-CLASS PAY

Represented employees assigned to work temporarily in a higher classification than their own shall be paid at least five percent (5%) more than their prevailing salary or at the entrance step of the range of the higher classification, whichever compensation pattern is greater.

- A. Such assignment will be paid for all actual time assigned to the higher classification, after a four (4) hour elimination period on the first day of said assignment.
- B. If the out-of-class assignment lasts more than four (4) hours, out-of-class pay will begin with the first hour of the assignment.
- C. For a continuing out-of-class assignment of less than four (4) hour increments which lasts more than four (4) hours, out-of-class pay will begin with the first hour of the assignment.

Any represented employee who is assigned to work out of class in an unclassified position will receive a five percent (5%) salary differential above his/her current salary or the salary established as eighty-five percent (85%) of Control Point for the unclassified position if such salary has been established, whichever compensation pattern is greater, provided that the requirements of (A), (B), and (C) above are satisfied.

To be eligible for out-of-class pay, the employee must perform all duties as assigned within the higher classification and must be assigned in writing.

21. PERSONAL SAFETY EQUIPMENT REIMBURSEMENT

Represented employees will be reimbursed an amount (outside of total compensation), as set forth below, toward the purchase or repair of the following types of protective personal safety equipment – footwear, eye protection, ear plugs, headwear protection, and work gloves – so long as the Department Head or designee confirms in advance that the type/quality of equipment satisfies City and Cal-OSHA requirements for the applicable job class. The maximum reimbursement amount shall be no more than \$180 for the period July 1, 2005 through June 30, 2006, and no more than \$90 for the period July 1, 2006 through December 31, 2006. Thereafter, employees will be reimbursed an amount not to exceed \$180 each calendar year.

Unless specifically authorized in writing by the department head to purchase equipment certified to a different standard, or to be excused from the requirement to wear protective footwear during the performance of his/her duties, employees are required to have protective footwear available to them at their regular work site and are subject to disciplinary action if they do not have them available at the work site when a need to wear such protection arises.

The City will continue the current policy to provide safety and/or protective equipment and/or clothing for use by the employee while performing his/her normal duties or during inclement weather or in other occasional special assignments or conditions.

22. STEP INCREASES

Step increases will be applied as follows:

- A. Employees who have an anniversary date that falls within the first week of the pay period and who have been approved for a step increase will be adjusted on the beginning day of the pay period during which the anniversary date falls.
- B. Employees who have an anniversary date that falls within the second week of the pay period and who have been approved for a step increase will be adjusted on the beginning day of the pay period immediately following the anniversary date.
- C. Employees who have passed their probationary period will receive a step increase on the pay scale for their job classification each year on their anniversary date until reaching salary Step “5.”
- D. Employees will receive an increase to Step “6” on their anniversary date on the pay scale for their job classification if they are at Step “5” for at least one (1) year and have at least ten (10) years of regular City service.
- E. Employees will receive an increase to Step “7” on their anniversary date on the pay scale for their job classification if they are at Step “6” for at least one (1) year and have at least fifteen (15) years of regular City service.

23. REST PERIOD FOLLOWING OVERTIME WORK

Any employee working eight (8) or more hours at the overtime rate during the fifteen (15) hour period immediately preceding the beginning of his/her regular work shift shall be entitled to a rest period of eight (8) consecutive hours on the completion of such overtime work with the following provisions:

- A. No employee shall be required to work in excess of sixteen (16) hours without rest unless an emergency is investigated and continued work is deemed necessary to prevent extreme property damage or to preserve human life.
- B. If the eight (8) hour rest period overlaps his/her regular work shift in whole or in part, he/she will be paid at the straight-time rate for the time which falls within his/her regular work shift.
- C. If the eight (8) hour rest period overlaps a portion of the first half of his/her work shift, the employee may be excused from work until the beginning of the second half of said shift. If the eight (8) hour rest period overlaps a portion of the second half of his/her work shift, he/she may be excused from work until the following work shift. He/she will be paid, however, for that portion of the rest period which overlaps his/her normal working shift. He/she will not be paid for the time between expiration of the rest period and his/her reporting for work.
- D. Hours worked prior to an eight (8) hour rest period shall not be included in determining another rest period.

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- E. If the employee is called back to work during his/her eight (8) hour rest period, a new rest period will commence at the conclusion of such work.
- F. Any employee who works a minimum of three (3) hours of emergency overtime between the hours of 11:00 p.m. and 6:00 a.m. will receive an eight (8) hour rest period commencing at the time of release from duty.
- G. Notwithstanding the foregoing, if the employee is required to work during regular work hours on a work shift without having had a rest period of eight (8) hours, for which he/she has qualified as set forth above, he/she shall be paid at the overtime rate for all work performed until he/she has been released from duty for at least eight (8) hours.
- H. Notwithstanding the foregoing, an employee assigned to attend a City Planning Commission meeting in the capacity of a Department representative shall be entitled to an eight (8) consecutive hour rest period if the City Planning Commission meeting adjourns later than 1:00 a.m. The employee will be paid straight time for the hours of the rest period that overlap the employee's regularly scheduled work shift.

24. ALTERNATE WORK SCHEDULE (NINE-EIGHTY SCHEDULE)

An employee, subject to the conditions of the employee's job assignment, may propose an alternate work schedule as described in City Manager's Directive #71. Proposal must be made to the Department Head through the immediate supervisor. Consideration will be given as to the feasibility and impact on productivity of such proposal. Management retains the sole right to determine scheduling needs. A proposal for alternate work schedule, and the establishment or discontinuance of an alternate work schedule is not subject to any grievance procedure.

25. DOMESTIC PARTNERS

The City shall make all benefit programs available to employees, dependents and domestic partners, subject to the requirements of each benefit provider.

26. FLEXIBLE SPENDING PLAN, INTERNAL REVENUE CODE, SECTION 125

The City will make available a Flexible Spending Plan under the Internal Revenue Code Section 125 for employees. Employees may contribute pre-tax (federal, state, FICA) dollars for dependent care and qualified un-reimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Code. Detailed information will be available in the Summary Plan Document.

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

27. NEXT MEMORANDUM OF UNDERSTANDING

The Engineers and the City will exchange all proposals for an MOU for the term commencing at the expiration of this agreement no later than August 29, 2008.

28. EMPLOYEE RIGHTS

- A. All rights, privileges and working conditions enjoyed by the classifications represented by the Engineers, as defined in Personnel and Salary Resolution No. 2979, entitled "Employer-Employee Relations" dated December, 1972, and other City resolutions, if any, dealing with employee rights and benefits shall not be reduced during the term of this MOU.
- B. The City's employee grievance process is established in City Manager's Directive (CMD) #47, titled On the Job Personnel Grievances. This CMD generally describes the process available to individual employees to clarify (and modify, if so required) interpretations of City rules, regulations, procedures and policies, including interpretations of this MOU. Should the City determine that CMD #47 needs to be revised during the term of this MOU, an offer to meet and consult with representatives of Unit 4 shall be extended for the purpose of receiving Unit 4 comments prior to the adoption of the revised CMD.
- C. The following procedure will be in place for represented employees who choose to have Bargaining Group representation during the course of the Grievance process. If an employee chooses not to have Bargaining Group representation, the employee will follow the grievance procedure in CMD #47.
 - 1) The employee must begin the grievance process by requesting an informal discussion between the employee and his/her supervisor, or designee (up to and including the Department Head). Should this informal process not result in resolution of the grievance, the employee shall render his/her grievance in writing and submit it to his/her Department Head, or designee, for formal action as outlined in Paragraph 2.
 - 2) Within five (5) working days (or at a later date by mutual agreement between the employee, his/her representative and the Department Head, or designee, in order to accommodate scheduling problems) of the receipt of the formal grievance, the Department Head, or designee, shall review the entire grievance file through a meeting with the employee and his/her Bargaining Group representative. Within five (5) working days from the date of this meeting, the Department Head, or designee, will respond in writing to the employee and the Bargaining Group representative, setting forth his/her resolution to the problem. The employee, or the Bargaining Group representative on behalf of the employee, must respond within five (5) working days to the Department Head, or designee, in writing as to whether the grievance has been resolved or is still unresolved. If the matter has not been resolved as a result of this step, the Department Head, or designee, shall immediately, upon receipt of the unresolved notification, forward all written material, including the original grievance, to the Municipal Employee Relations Officer (MERO), or designee, for action as outlined in Paragraph 3.

- 3) Within five (5) working days (or at a later, mutually agreeable, date if any party to the grievance is not available within the five (5) day period) of the receipt of the grievance material, the MERO, or designee, and the Department Head, or designee, shall review the entire grievance file through a meeting with the employee, his/her Bargaining Group representative and any additional parties who the MERO, or designee, or the Bargaining Group representative feels can help to resolve the grievance. Within five (5) working days from the date of this meeting, the MERO, or designee, will respond in writing to the employee and the Bargaining Group representative, setting forth his/her resolution to the problem. The employee, or the Bargaining Group representative on behalf of the employee, must respond within five (5) working days to the MERO, or designee, in writing as to whether the grievance has been resolved or is still unresolved. If the matter has not been resolved as a result of this step, the MERO, or designee, shall forward all written material, including the original grievance, to a Joint Grievance Committee for action as outlined in Paragraph 4.
- 4) Within fifteen (15) working days of the receipt of the grievance material the Joint Grievance Committee will meet. Such Committee shall be composed of four (4) members: two (2) members representing the City and two (2) members representing the Bargaining Group. The Grievant and the Grievant's Department Head, or designee, shall not be committee members although they shall be present at the meeting. The Committee shall render an advisory opinion to the City Manager, or designee, within ten (10) working days unless extended by mutual agreement. The City Manager, or designee, shall render a decision within five (5) working days of that meeting. The City Manager's decision will be directed to the employee through his/her Department Head, or designee, and to the Bargaining Group. If the employee, or the Bargaining Group representative on behalf of the employee, disputes the City Manager's final decision in the matter, the advisory mediation process outlined in Paragraph 5 will be available.
- 5) If the Bargaining Group continues to dispute the decision of the City Manager, or designee, on behalf of the employee, the Bargaining Group shall, within fifteen (15) working days of the City Manager's decision, request that the matter be referred to a Mediator appointed by the California State Mediation and Conciliation Service, who shall render an advisory opinion on the merits of the grievance to the City Manager, or designee. The City Manager, or designee, may accept, modify or reject the advisory opinion of the Mediator. Following the review of the Mediator's opinion the City Manager's decision shall be final.

29. MANAGEMENT RIGHTS

Subject to State law and the provisions of City of Santa Clara Employer-Employee Relations Resolution, the rights of the City through its Council and Management include, but are not limited to: the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; establish and enforce dress and grooming standards; direct its employees; determine the methods and means to relieve its employees from duty because of

lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operation of the City; to assign work to and schedule employees in accordance with requirements as determined by the City including but not limited to: establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for cause; establish and modify probationary periods and reasonable employee performance standards including, but not limited to, quality, and quantity standards; and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

The City Council on its own behalf and on behalf of the City hereby retains and reserves unto itself all rights, power, authority, duty, responsibility and obligations conferred on and vested in it by the laws and Constitutions of the State of California and the United States of America. The exercise of such rights, power, authority, duty, responsibility and obligations by the City Council and the adoption of such rules, regulations, policies as are necessary and as they apply to employees represented by the Engineers shall be in accord with this MOU to the extent that they do not violate any of the reserved duties, responsibilities and obligations conferred on and vested in it by the laws, Charter of the City, Constitutions of the State of California, and the United States of America.

30. SCOPE OF THIS MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the meetings which preceded this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this MOU. Therefore, for the life of this MOU, the City and the Engineers voluntarily and unqualifiedly waive the rights and each agrees that the other shall not be obligated to meet and confer with respect to any subject or matter not referred to or covered in this MOU, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they met and signed this MOU.

Notwithstanding the foregoing, however, in the event any portion of this MOU is declared null and void by superseding Federal, State or City law, the balance of this MOU shall continue in full force and effect, and the parties shall immediately commence the meet and confer process to ensure that the superseded portions shall be rewritten to conform as nearly as possible to the original intent.

MEMORANDUM OF UNDERSTANDING – UNIT # 4 (2005 – 2008)

In the event that any other document issued by the City such as City Manager's Directives, Departmental Rules or general operating procedures is in conflict with this MOU, the MOU will prevail unless such change has been expressly agreed to in writing by the City and the Engineers.

The City further reserves the right to consider required organizational and operational changes in the economical and efficient operation of the Department whenever existing or future statutes bring about additional monetary costs.

Nothing in the foregoing shall prevent the parties to this agreement from meeting-and-conferring during the term of this MOU in matters of mutual concern. Such meeting-and-conferring shall be established and continued by mutual consent only. If, after meeting and conferring between the management representatives and the majority employee representatives, no agreement has been reached, such items under discussion shall remain unchanged.

MEMORANDUM OF UNDERSTANDING – UNIT # 4 (2005 – 2008)

FOR THE CITY OF SANTA CLARA

(Eddie Kreisberg) (03/09/06)

Eddie Kreisberg Date

(Renée Ruņģis) (03/07/06)

Renee Ruņģis Date

(Derick Yasuda) (03/07/06)

Derick Yasuda Date

(Rajeev Batra) (03/08/06)

Rajeev Batra Date

FOR THE ENGINEERS OF THE CITY
OF SANTA CLARA

(Dennis Steffani) (03/07/06)

Dennis Steffani Date

(Kevin Keating) (03/07/06)

Kevin Keating Date

(Darrell Mackie) (03/07/06)

Darrell Mackie Date

APPROVED: (Jennifer Sparacino)
JENNIFER SPARACINO, City Manager Date

APPROVED BY THE CITY COUNCIL ON: March 7, 2006

ATTEST: (Rod Diridon Jr.)
RODNEY DIRIDON, JR., City Clerk Date